

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1561 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

GANGABEN CHHANABHAI PATEL

Appearance:

MR NV ANJARIA for Appellant

None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/09/98

ORAL JUDGEMENT

1. This appeal is directed by Gujarat State Road Transport Corporation, Astodia, Ahmedabad against the award of the Motor Accident Claims Tribunal, Valsad at Navsari in M.V.Claim Petition No.34 of 1985 decided on 7-3-1986 under which the claimants-respondents were awarded Rs.40,000/- as compensation together with proportionate costs and interest at the rate of 6% p.a. from the date of application till realisation for death

of Chhanabhai Sukhabhai Patel in motor vehicular accident caused by the S.T. bus.

2. Learned counsel for the appellant raised two-fold contentions in this appeal. Firstly, it is contended that the vehicle, the S.T. bus of the Corporation bearing No.GRR 8055 was not involved in this accident. The finding is based merely on the chargesheet filed in the criminal case, which is wholly illegal. On the quantum of the amount of compensation awarded, learned counsel for the appellant contended that it is towards the higher side.

3. I have given my thoughtful consideration to the submissions made by the learned counsel for the appellant.

4. It is true that in this case no eye-witness of the accident has been examined but it is equally true that the Tribunal has to decide the matter on the basis of evidence produced before it. Merely because the eye-witness has not been examined, it is not the law that the Tribunal will not accept or believe the evidence produced by the claimants and to decide whether the alleged offending vehicle was involved in the accident or not. Learned counsel for the appellant very fairly admits that the driver of the vehicle was not examined in this case by the Corporation. The applicant No.1, the widow of the deceased examined at Ex.14, was not the eye-witness but she produced on the record of this claim application, the document i.e. the the certified copy of the chargesheet of the criminal case No.2854/84 filed in the court of Judicial Magistrate First Class, Gandevi and the certified copy of the statement of the driver of the vehicle. The statement of the driver recorded in the criminal case has not been relied upon by the Tribunal on the ground that the accused has not been examined. However, that approach of the Tribunal in this matter how far is correct is not the question which I may deal with in this case but that approach prima-facie seems to be not correct. The driver of the vehicle was one of the party to this claim application and in case his statement in the criminal case recorded is produced and in case he has not controverted the statement I have my own reservation whether even then the Trial court could have discarded this statement. Be that as it may. The chargesheet has been proved and therefore the Tribunal has not committed any error more so in the absence of any evidence produced in rebuttal by the driver and the Corporation to held that the vehicle, the S.T. bus was involved in the accident. This finding recorded by the

Tribunal relying on this document cannot be said to be illegal or arbitrary and this court cannot interfere with the same. It is the Corporation and its driver who have not produced any evidence in rebuttal in support of their case that the offending vehicle was not involved in the accident and now they want to rely only on the abstract doctrine of burden of proof. It is true that initial burden lies on the claimant but where this has been discharged and in fact it has been discharged in the present case by producing the chargesheet of the criminal case then the heavy burden lies on the Corporation and the driver to rebut that evidence and where they fail to do so, the Tribunal was left with no option except to take the evidence of the claimants to be correct and pass the appropriate order. The first contention raised by the learned counsel for the appellant deserves no acceptance.

5. So far as the quantum is concerned, I am satisfied that the Tribunal has not committed any error in awarding Rs.40,000/- to the claimants. Precisely also, learned counsel for the appellant failed to point out any of the item awarded under different heads to be towards to the higher side. The income of the deceased was taken to be only Rs.400/- p.m. which by any stretch of imagination can be said to be towards the higher side. On the basis of that income, the dependency has been taken of the claimants and multiplier applied in the case also cannot be said to be towards the higher side. Similarly, the amount of Rs.2000/which has been awarded under the head of pain, suffering, loss of husband in the case of applicant No.1 and father in the case of other claimants cannot be said to be towards the higher side.

6. Taking into consideration the totality of the facts of this case, I do not find that any illegality has been committed by the Tribunal in passing of the award impugned in this appeal, which calls for interference of this court.

7. In the result, this appeal fails and the same is dismissed.

zgs/-